

**McNAIR LAW FIRM, P.A.**

ATTORNEYS AND COUNSELORS AT LAW

NATIONSBANK TOWER/1301 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201

MAILING ADDRESS:  
POST OFFICE BOX 11390  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE 803/799-9800  
FACSIMILE 803/799-9804

CHARLESTON OFFICE  
140 EAST BAY STREET  
CHARLESTON, SC 29401  
TELEPHONE 803/723-7831  
FACSIMILE 803/722-3227

GEORGETOWN OFFICE  
121 SCREVEN STREET  
GEORGETOWN, SC 29440  
TELEPHONE 803/546-6102  
FACSIMILE 803/546-0096

GREENVILLE OFFICE  
7 NORTH LAURENS STREET/SUITE 601  
GREENVILLE, SC 29601  
TELEPHONE 803/271-4940  
FACSIMILE 803/271-4015

HILTON HEAD OFFICE  
31-C BOW CIRCLE  
HILTON HEAD ISLAND, SC 29928  
TELEPHONE 803/785-5169  
FACSIMILE 803/842-3310

MYRTLE BEACH OFFICE  
2411 OAK STREET/SUITE 403  
MYRTLE BEACH, SC 29577  
TELEPHONE 803/444-1107  
FACSIMILE 803/444-4729

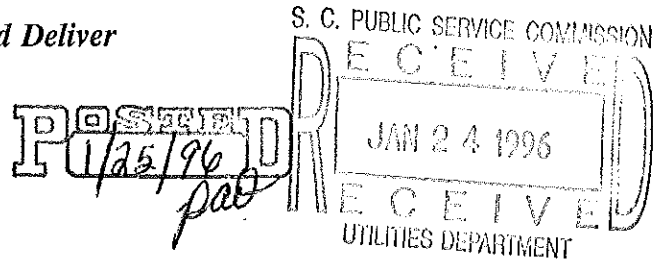
SPARTANBURG OFFICE  
101 WEST ST. JOHN STREET/SUITE 306  
SPARTANBURG, SC 29306  
TELEPHONE 803/542-1300  
FACSIMILE 803/542-0705

WASHINGTON OFFICE  
1155 FIFTEENTH STREET, N.W./SUITE 1101  
WASHINGTON, DC 20005  
TELEPHONE 202/659-3900  
FACSIMILE 202/659-6763

January 19, 1996

*Hand Deliver*

Mr. Gary E. Walsh  
Deputy Executive Director  
South Carolina Public Service Commission  
Post Office Box 11649  
Columbia, South Carolina 29211



Re: Cherokee County Cogeneration Partners, L.P. -- Purchased Power Agreement with Duke Power Company (SCPSC Docket No. 94-615-E) and Certificate of Environmental Compatibility and Public Convenience and Necessity for Cogeneration Facility (SCPSC Docket No. 95-628-E)

Dear Mr. Walsh:

In accordance with the provisions of Order No. 95-26, issued in Docket No. 94-615-E, please find enclosed five (5) copies of Amendment No. 2, dated January 18, 1996, to the Purchased Power Agreement ("the PPA") between Cherokee County Cogeneration Partners, L.P., ("Cherokee") and Duke Power Company. Order No. 95-26 approved the PPA itself and required the filing of any amendments or modifications within ten (10) days of execution.

In response to Order No. 95-1198, issued in Docket No. 95-628-E, please find enclosed five (5) copies of Progress Report No. 94-6421/001, prepared by the Harris Group, Inc., which describes certain specifications of Cherokee's intended cogeneration facility which were unavailable at the time of the application in Docket No. 95-628-E and at the hearing held in that proceeding.

Please accept these materials for filing and make the necessary arrangements to advise the Commission of their receipt in accordance with the Commission's practices. If you have any questions with respect to this matter, please do not hesitate to contact me.

Very truly yours,

Robert T. Bockman

/eab

Enclosures

cc: John C. Hooker  
Jeffery M. Trepel, Esquire

Duke Power Company

AMENDED APPENDIX B  
Page 2 of 2CHEROKEE COUNTY COGENERATION PARTNERS, L.P.  
"Gaffney Cogeneration Facility"

## LIQUIDATED DAMAGES (Cont'd)

Liquidated Damages for the detrimental effect of Cherokee's failure to meet certain milestones on Duke's cost of power shall be calculated in accordance with the following formulas, which shall apply at all times from the date of execution of this Agreement until the Commercial Operations Date:

TABLE B-2  
PRE-COMMERCIAL OPERATIONS LIQUIDATED DAMAGES

<u>No.</u>	<u>Milestone</u>	<u>Liquidated Damages</u>
M <sub>1</sub>	From contract execution until Anticipated Construction Start Date (as set forth in Article 3.2 hereof)	$LD_{M1} = \$10.00/kW \times CC$
M <sub>2</sub>	From Anticipated Construction Start Date until sixty (60) days after Anticipated Commercial Operations Date (as set forth in Article 3.4(a) hereof)	$LD_{M2} = \$0.48/kW/week \times CC \times$ number of whole weeks since Anticipated Construction Start Date
M <sub>3</sub>	For each month, beginning June 1, 1998 through September 30, 1998, if Avg kW < 65,000 kW	$LD_{M3} = \$6.38/kW/month \times (65,000 kW - Avg kW)$
M <sub>4</sub>	Beginning sixty (60) days after the Anticipated Commercial Operations Date	$LD_{M4} = \$0.83/kW/week \times CC \times$ number of whole weeks since Anticipated Commercial Operations Date

where:

$LD_{M1,M2,M3,M4}$  = Pre-Commercial Operations Liquidated Damages applicable for each milestone set forth in Table B-2 of this Appendix B.

CC = Capacity Commitment, in kilowatts, as set forth in Article 1.5(b)

Avg kW = Total kilowatthours delivered to Duke during the On-Peak Hours of the month, divided by the number of On-Peak Hours in the month.

The Pre-Commercial Operations Date Liquidated Damages set forth in Table B-2 above shall begin to accrue, and Duke will draw on the Security in the appropriate weekly or monthly amount, on the following week or month after the milestone or date was scheduled to occur pursuant to this Agreement and shall continue until the next milestone date occurs or the specific milestone is achieved.

The Liquidated Damages and Liquidated Damage Rate(s) set forth in this Appendix B are based on Duke's expected additional cost of obtaining replacement power from resources outside of its service territory.

AMENDED APPENDIX B - LIQUIDATED DAMAGES  
CHEROKEE COUNTY COGENERATION PARTNERS, L.P.  
"Gaffney Cogeneration Facility"

Duke Power Company

APPENDIX B

Page 1 of 2

CHEROKEE COUNTY COGENERATION PARTNERS, L.P.  
"Gaffney Cogeneration Facility"

## LIQUIDATED DAMAGES

Liquidated Damages for the detrimental impact of a reduction in capacity Cherokee makes available to Duke pursuant to this Agreement shall be calculated in accordance with the following formula:

$$\text{LIQUIDATED DAMAGES} = \text{LDR}_{(n)} \times \text{Capacity Commitment Reduction}$$

where:

$\text{LDR}_{(n)}$  = Liquidated Damage Rate, expressed in dollars per kilowatt (\$/kW), applicable in year "n", as set forth in the table below.

n = the year in which the Capacity Commitment Reduction occurs.

Capacity Commitment Reduction = the magnitude, in kilowatts, of the reduction in Cherokee's Capacity Commitment as determined pursuant to Article 5.2. In the event of a termination, the Capacity Commitment Reduction shall be deemed to be equal to the Capacity Commitment in effect at the time of such termination.

TABLE B-1  
LIQUIDATED DAMAGE RATE

YEAR	LDR <sub>(n)</sub> (\$/KW)
1996	\$46.00
1997	\$48.00
1998	\$51.00
1999	\$54.00
2000	\$57.00
2001	\$60.00
2002	\$63.00
2003	\$67.00
2004	\$70.00
2005	\$74.00
2006	\$78.00
2007	\$83.00
2008	\$87.00
2009	\$92.00
2010	\$97.00
2011	\$102.00

If Cherokee notifies Duke, pursuant to Article 3.5, that it does not wish to continue to generate electricity at the Facility following expiration of the term of this Agreement, or if Cherokee notifies Duke that it does wish to continue to generate electricity at the Facility following expiration of the term of this Agreement, and Duke responds that it does not intend to purchase said electricity, then the Liquidated Damage Rate ( $\text{LDR}_{(n)}$ ) set forth in Appendix B shall be reduced to \$82.00 in 2008, to \$63.00 in 2009, to \$40.00 in 2010, and to \$14.00 in 2011.

If the Agreement is extended pursuant to Article 3.8, the Liquidated Damage Rate applicable for each year of the five (5) year extension period shall be calculated solely by Duke at the time of Cherokee's election of its extension option.

(Continue)

APPENDIX B - LIQUIDATED DAMAGES  
CHEROKEE COUNTY COGENERATION PARTNERS, L.P.  
"Gaffney Cogeneration Facility"

STATEMENT OF AMENDMENT NO. 2 TO  
PURCHASED POWER AGREEMENT BETWEEN  
CHEROKEE COUNTY COGENERATION PARTNERS, L.P.,  
AND DUKE POWER COMPANY

INTRODUCTION

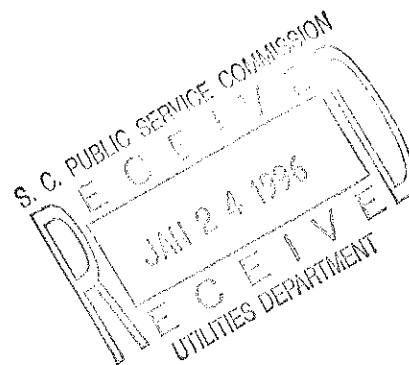
Amendment No. 2, dated January 18, 1996, principally represents the settlement of a dispute between Cherokee County Cogeneration Partners, L.P. ("Cherokee") and Duke Power Company ("Duke") concerning the amount of energy Duke is obligated to purchase under the Purchased Power Agreement at the rates in the Agreement.

THE DISPUTE

- PSC Order 95-26, dated January 18, 1995, approved the Purchased Power Agreement between Duke and Cherokee and required any subsequent amendments or modifications to be filed with the Commission.
- Article 1.1 of the Agreement provided that Duke would purchase all the electric power generated by Cherokee's Facility
- Article 1.5(a) provides that the nameplate capacity of Cherokee's generating facilities is to be 80,000 kW and describes the equipment which will be installed. The generating facilities which the General Electric Company will manufacture and install meet the specifications in the Agreement
- The output of generating facilities varies with certain operating conditions including temperature. Under certain circumstances (for example, the temperature conditions in Cherokee's Siting Act Application), the equipment described in Article 1.5(a) will generate output in excess of 80,000 kW (net).
- Cherokee maintained the positions that Article 1.1 of the Agreement required Duke to purchase all of the power generated by the described equipment and that Article 4.5 required Duke to pay the contract rates for all of the output. Duke took the position that it was obligated to purchase only 80,000 kW at the rates in the Agreement.
- Without a resolution of the dispute, Duke refused to consent to a third party assignment of the Agreement which Cherokee's Lender required for financial closing with Cherokee

### THE RESOLUTION

- By Article 1.1 in Amendment No. 2, Cherokee and Duke have agreed to a limitation of the output Duke will be required to purchase under the Agreement to: (i) an average of 80,000 kW over the On-Peak Hours in the two six-month periods of April-September and October-March; and (ii) 62,000 kW in any Off-Peak Hour. These limitations basically reflect Duke's position on the energy levels.
- Articles 1.9 and 1.10 of the Amendment remove the express requirement in the original language for Cherokee to purchase from Duke back-up and maintenance power for the Facility and power for Cherokee's manufacturing plant.
- Article 1.11 in the Amendment provides that the Agreement does not prohibit Cherokee from sales of electric power to third parties subject to Duke's right to "recall" firm capacity in accordance with the Agreement.
- Article 3.3 in the Amendment adjusts the Initial Delivery Date for power to be delivered to Duke to June 1, 1998.
- Article 3.4(a) in the Amendment adjusts the Anticipated Commercial Operations Date to November 2, 1998.
- Article 11.1(h) in the Amendment provides for liquidated damages after the amended Initial Delivery Date.
- Article 18.11 in the Amendment provides for preservation of Cherokee's rights under PURPA to sell capacity and energy.
- The remaining modifications are minor clarifying or conforming changes.



## **Amendment No. 2**

**to**

## **Purchased Power Agreement**

---

**between**

**Duke Power Company  
and  
Cherokee County Cogeneration Partners, L.P.**

**Amendment No. 2 Execution Date: January 18, 1996**

## AMENDMENT NO. 2

CHEROKEE COUNTY COGENERATION PARTNERS, L.P., and DUKE POWER COMPANY do hereby mutually agree and consent to the amendment of the Purchased Power Agreement between the parties, dated August 26, 1994, and as amended by Amendment No. 1, which Agreement is hereby modified in the following respects only:

- RECITALS P. 1, line 31. Delete "(with liquid propane pipeline backup)."
- RECITALS P. 1, line 32. Change "Gaffney, South Carolina" to "at or near Gaffney, South Carolina."
- ARTICLE 1.1 P. 2, lines 12-15. Delete the entire Article 1.1 and substitute the following language: "1.1 Beginning with the Initial Delivery Date as defined in Article 3.3, Cherokee will sell and deliver to Duke energy generated by the Facility, limited to (i) 62,000 kilowatts in any Off-Peak Hour, and (ii) a seasonal average output of 80,000 kilowatts over the On-Peak Hours in any six-month period as set forth below ("Average Seasonal Output Limitation"). Cherokee will deliver to Duke energy up to those levels of output, and Duke will purchase, receive, use and pay for the same, subject to the conditions contained in this Agreement. The energy deliveries will be measured on a monthly basis within two six-month periods ( April-September and October-March) ("Seasonal Periods") beginning with the first billing month after the Initial Delivery Date as defined in Section 3 of this Agreement, in order to determine compliance with the limitations set forth above. Duke shall have no obligation under this Agreement to pay for energy which Cherokee delivers to Duke in excess of the Average Seasonal Output Limitation during any Seasonal Period. Cherokee shall deliver its Capacity Commitment and Duke shall pay for capacity in accordance with the provisions of Articles 4 and 5 of this Agreement."
- ARTICLE 1.2 P. 2, line 17. Delete "Service" and substitute the following language: "Any electric service which Duke furnishes to Cherokee"
- ARTICLE 1.9 P. 4, lines 3-5. Delete the entire Article 1.9 and substitute the following language: "1.9 Any back-up and maintenance power which Cherokee will require from Duke for the Facility's auxiliary electrical requirements shall be provided pursuant to a separate Electric Service Agreement under Duke's rate schedule appropriate for such service. Such agreement will be executed prior to the Initial Delivery Date for the Facility."
- ARTICLE 1.10 P. 4, lines 7-10. Delete the entire Article 1.10 and substitute the following language: "1.10 Any electrical service which Cherokee will require from Duke for Cherokee's manufacturing facility"

which is adjacent to the Gaffney Cogeneration Facility will be supplied by Duke through the above described delivery point and metering location pursuant to a separate Electric Service Agreement under Duke's rate schedule appropriate for such service. Such Electric Service Agreement will be executed prior to the Initial Delivery Date for the Facility."

ARTICLE 1.11

P. 4, line 11. Add the following language as a new Article 1.11: "Nothing in this Agreement will prohibit Cherokee from the sale of electric power to any third party so long as Cherokee meets its obligations to Duke in this Agreement, provided that any such sale to a third party shall be subject to Duke's right to recall 72.7 MW of firm capacity at any time. Cherokee may satisfy its obligation for any such recall by providing ninety percent (90%) of 72.7 MW in accordance with this Agreement. For any such recall, Duke shall pay for capacity and energy in accordance with Articles 4 and 5 of this Agreement, and energy delivered pursuant to such recall shall not be counted toward the limitations in Article 1.1."

ARTICLE 3.3

P. 6, line 12. Change "August 1, 1996" to "June 1, 1998."

P. 6, line 13. Add the following language after the word "Date": "to a date earlier than June 1, 1998,".

P. 6, line 14. Change "June 1, 1996" to "March 1, 1997."

ARTICLE 3.4(a)

P. 6, lines 19-25. Change "November 1, 1996;" to "November 2, 1998." Delete the remaining language of Section 3.4(a).

ARTICLE 3.4(b)

P. 6, line 32. Change "sixty (60)" to "three hundred (300)."

ARTICLE 11.1(h)

P. 22, lines 29. Add the following language as a new section: "(h) in the event Cherokee fails to make initial deliveries on or before June 1, 1998, liquidated damages for the detrimental effect of such failure on Duke's cost of power, as calculated pursuant to the formulas set forth in Appendix B."

ARTICLE 12.2

P. 23, lines 10-12. Add a period after the word "manner" and delete the remaining language of Article 12.2.

ARTICLE 12.5(a)

P. 24, line 3-5. Delete the final sentence of Article 12.5(a) and substitute the following sentences: "Subject to Article 12.5(b), Cherokee shall not be required to reduce the net output of the Facility below 59,000 kilowatts. In any event, Cherokee will not deliver to Duke more than 62,000 kilowatts unless Duke requests Cherokee to do so."

ARTICLE 18.7

P. 30, line 27. Change "the Electric Service Agreements" to "any Electric Service Agreements."

P. 30, line 27-28. Delete "dated \_\_\_\_\_."



ARTICLE 18.11

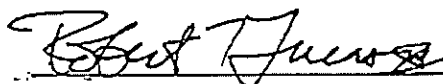
P. 31, line 7. Add the following language as a new Article 18-11:  
"18.11 No Waiver of PURPA Rights. Nothing in this Agreement will constitute a waiver of any rights accruing to Cherokee by its maintenance of QF status under PURPA to sell capacity and/or energy from the Facility to Duke or any party in excess of the capacity which Cherokee is obligated to deliver pursuant to Article 5 and the energy and capacity which Duke is obligated to purchase as limited by the provisions of Article 1.1."

APPENDIX B

Replace existing Appendix B with the attached Appendix B, dated January 16, 1996, incorporated herein by reference.

Except as expressly modified herein, the said Purchased Power Agreement shall remain in full force and effect and is hereby ratified and affirmed.

ATTEST:

  
\_\_\_\_\_

Name: Robert T. Lucas III

Title: Assistant Secretary

DUKE POWER COMPANY:

By:   
\_\_\_\_\_

Name: William F. Reinke

Title: Vice-President, System Planning & Operating

CHEROKEE COUNTY COGENERATION  
CORP., as a Partner on behalf of

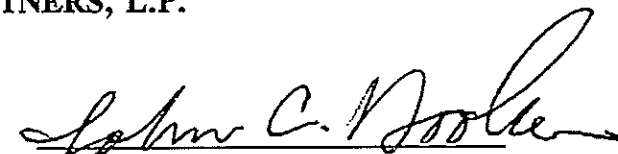
CHEROKEE COUNTY COGENERATION  
PARTNERS, L.P.

ATTEST:

  
\_\_\_\_\_

Name: Peter J. Schaeffer

Title: Assistant Secretary

By:   
\_\_\_\_\_

Name: John C. Hooker

Title: President